Pkg. file in SFRC

OLC: 78-647/10
29 September 1978

MEMORANDUM FOR: Legislative Counsel

25X1 FROM: [redacted]
Assistant Legislative Counsel

SUBJECT: A/DDO Meeting with Mike Glennon on 4 October 1978

1. The meeting has been scheduled to take place at 2:00 on Wednesday. Glennon has been notified and the meeting is entered on your calendar as well. In addition to you and myself, [redacted], of OGC, and 25X
25X1 I presume, [redacted], will also be present. Glennon will not be continuing his interviews with Desk level DDO officers until after the meeting with [redacted]
25X1

2. Two papers are in preparation. The first, to be read by
X1 [redacted] will be on the subject of foreign liaison relationships generally. It will be based on the attached paper done for Senator Inouye in January 1977, with the addition of material on: why liaison is such a sensitive source and method; the kinds of training that may be provided to a liaison service; and the question of CIA support in the area of funding.

X1 3. In addition, [redacted] will be preparing material on our justification for declining to answer the McGovern Subcommittee staff's specific questions on our liaison relations with particular foreign intelligence services. This explanation will be based on the attached December 1977 letter from General Counsel Tony Lapham to Congressman Wyche Fowler. It will also make reference to Senator McGovern's promises to the President and the DCI (see attached letters) regarding the circumspection with which the Subcommittee's investigation would be conducted, and it will draw upon the rationale to be provided by DDO regarding the sensitivity of liaison relationships and the potential for damage, should it become known that the Agency was providing specific information on individual relationships to the Congress.

4. This material should be ready in draft form some time on Monday. I have asked both Evvy and Bernie to send you copies of the drafts which will also be going to [redacted] 25X

SECRET [redacted] 25X

5. I think we should lead off the session with [redacted] speaking to the substance at hand, and that we should hold Bernie's paper in reserve until we are pressed for the justification of our refusal to answer specific questions. You may want to think about who would be the most appropriate person to read our justification into the record. 25X

25X1

6. I have asked [redacted] to provide my secretary with copies of the drafts and I will attempt to look at them on Tuesday night. We may have time to do a run-through on Wednesday morning depending on [redacted] schedule.

25X1

[redacted] 25X

Attachments:
As Stated

25X1 Dist.:
Orig-Addressee w/atts.
1-OGC [redacted] w/o atts.
1-[redacted] w/o atts.
1-OLC Subject w/atts.
25X1 1-OLC Chrono w/o atts.
OLC:GMC:mlg (29 Sept 1978)

Next 5 Page(s) In Document Exempt

Approved For Release 2004/03/26 : CIA-RDP81M00980R003400070045-9

Washington, D.C. 20505

16 December 1977

The Honorable Wyche Fowler, Jr.
Permanent Select Committee on Intelligence
U. S. House of Representatives
Washington, D. C. 20515

Dear Congressman Fowler:

Your letter of December 1 asked that I identify "the legislation which authorizes the DCI to withhold intelligence information from the House Permanent Select Committee on Intelligence." The short answer is that in my opinion there is no such legislation.

While I have not yet seen a transcript of the November 30 proceedings to which you referred in your letter, and while therefore I do not have the benefit of the exact context of your exchange with the Director, it seems certain that the exchange centered on Section 102(d)(3) of the National Security Act of 1947, 50 U.S.C. §403(d)(3). A proviso in that section makes the Director of Central Intelligence "responsible for protecting intelligence sources and methods from unauthorized disclosure." An implementing provision in Section 6 of the CIA Act of 1949, 50 U.S.C. §403g, exempts the CIA from "the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency."

I take as a starting point the proposition that as a practical matter intelligence activities could not be successfully conducted, at least not for very long, unless intelligence agencies were reasonably secure against the compelled disclosure of information. I believe the Congress accepted that proposition when it enacted the sources and methods proviso in the National Security Act of 1947 and the implementing provision in the CIA Act of 1949. Both statutes in my view evidence a recognition that there are circumstances under which the withholding of certain information relating to intelligence activities is justified, if indeed it is not affirmatively required. That is not to say, however, that the rights and responsibilities created by these statutes are absolute, and certainly it is not to say that Congress acted in such a manner as to deliberately and effectively deny itself information that might be needed in the performance of its own legislative functions. On the contrary, I think it must be assumed that in enacting these statutes, whatever powers to withhold information it may have intended to confer or whatever duty to withhold information it may have intended to establish, the Congress did not intend to surrender or forfeit any of its own constitutional prerogatives, and I know of nothing in the legislative history of either statute that undercuts that assumption.

Both the sources and methods proviso in the National Security Act of 1947 and the implementing provision in the CIA Act of 1949 have been judicially construed. For example, the proviso has been seen as a proper foundation for the secrecy agreements that CIA employees must sign as a condition of their employment. U. S. v. Marchetti, 466 F.2d. 1309 (4th Cir. 1972). In addition, the proviso and the implementing provision have been given effect repeatedly as non-disclosure statutes for purposes of the Freedom of Information Act. See, e.g., Weissman v. CIA, (D.C. Cir. No. 76-1566, decided January 6, 1977); Phillippi v. CIA, (D.C. Cir. No. 76-1004, decided November 16, 1976). Whether these statutes created an independent evidentiary privilege, as against the disclosure demands of private plaintiffs in civil proceedings other than FOIA actions, is also a question that has been litigated, and I regard that question as still unsettled notwithstanding the negative conclusion reached in one recent case. See the attached opinion of Judge Griesa, dated June 10, 1977, in Socialist Workers Party v. Attorney General, (Civil No. 73-3160, S.D.N.Y.); see also Heine v. Raus, 399 F.2d. 785 (4th Cir. 1968). None of these precedents offers much in the way of immediate guidance, however, since none involved a dispute between the executive and the legislative branches and none presented an occasion to consider whether the statutes created some sort of a privilege as against the Congress. That question has never been litigated. Nor am I aware of any prior opinions prepared by the Department of Justice, or by this Office, dealing with that specific question.

It is my view that nothing in the 1947 or 1949 legislation, or in any other legislation for that matter, gives the CIA or the DCI an ultimate legal right to withhold information from any committee of the Congress, let alone from the committees that authorize CIA appropriations and are charged with the oversight of CIA activities. In saying that, though, I do not mean to imply that in all circumstances we would concede the right of any committee to obtain any information that it might request. The congressional power of inquiry, while broad, is not unlimited, see, e.g., Wilkinson v. U. S., 365 U. S. 399 (1961) and Watkins v. U. S., 354 U. S. 178 (1957), and situations could well arise in which we would resist disclosure of information requested by committees not exercising oversight with respect to CIA, on grounds that the particular requests seemed unrelated to any valid and authorized legislative purpose or that at least our concerns about the compromise of intelligence sources and methods should first be weighed by our oversight committees and balanced against the asserted legislative need. Nor do I mean to imply that there are no circumstances in which requested information might be withheld, even from the House Permanent Select Committee on Intelligence. So, for instance, if the DCI were asked in open session, or even in executive session, to identify CIA agents by name, I think it is safe to predict that the Director would decline. In all probability he would cite his statutory responsibility to protect intelligence sources against unauthorized disclosure, stress the extreme sensitivity of the requested information, and seek an accommodation that would allow the legislative interest to be served without

sacrificing the intelligence interest. If the dispute were resolved, however, say by the issuance of a subpoena calling for the production of a list of names, any refusal to comply would be based not on the statutory powers of the CIA or the DCI but rather on the constitutional powers of the President, whose personal decision in the matter would be required...

As you know, the history of disputes between the executive and the legislative branches, with regard to demands of the latter for information in the control of the former, has been a history of compromise. Only once to the best of my knowledge, in the still active case of U. S. v. American Telephone and Telegraph Co., have the respective constitutional powers of the President and the Congress, to withhold or obtain information relating to the national security, become the subject of judicial consideration. The AT&T case has twice reached the Court of Appeals for the District of Columbia Circuit, but in neither of the two resulting opinions (one dated December 30, 1976 and one dated October 20, 1977, copies attached) have the merits of the controversy been resolved. Rather on both occasions the Court of Appeals has remanded the case with directions to the parties to undertake further negotiations looking towards possible settlement. See also Comment, United States v. AT&T: Judicially Supervised Negotiation and Political Questions, 77 Col. L. Rev. 466 (1977), copy attached. Judicial reluctance to side either with the President or the Congress in a dispute of this sort is clearly apparent in both the AT&T opinions, and the reasons for that understandable reluctance are elaborated in the attached law review article.

In the end, I believe, and I am sure you will agree, that confrontation and litigation are poor alternatives when it comes to issues concerning the distribution of powers between the executive and legislative branches. Far better outcomes will be found, and bruising head-on collisions avoided in the process, if there is a spirit of cooperativeness on the part of the executive matched by reasonable self-restraint on the part of the Congress. I am confident that these conditions exist as between the Agency and the HPSCI. I also want to assure you, as I understand you were assured by the Director, that under no circumstances would false or misleading statements be regarded by the Agency as permissible responses to congressional requests for information. Should we receive a request to which we were not prepared or willing to respond, we would make our position and our reasons known so that matters could then proceed from that footing.

Sincerely,

[redacted]

Anthony A. Lapham
General Counsel

2

Central Intelligence Agency

Washington, D.C. 20505

OLC 77-1840/a

25 MAY 1977

Honorable George S. McGovern, Chairman
Subcommittee on International Operations
Committee on Foreign Relations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Thank you for your letter of 6 May 1977 concerning the inquiry your Subcommittee proposes to conduct into foreign intelligence activities in the United States in connection with the Subcommittee's concern with the Foreign Agents Registration Act and the adequacy of that legislation. Please be assured that I am prepared to cooperate with you and your Subcommittee colleagues on matters within the Subcommittee's jurisdiction.

Your letter reflects an awareness of the responsibility which the Congress placed upon the Director of Central Intelligence, in the National Security Act of 1947, to protect intelligence sources and methods from unauthorized disclosure. I am confident, however, that with the kind of mutual cooperation and understanding, which you expressed in your letter, we can fulfill your Subcommittee's requirements within the proscriptions imposed upon me by law and the guidelines contained in the various rules and resolutions of the Senate.

X1 [redacted], my Legislative Counsel, will be the Subcommittee's point of contact within CIA. I would suggest that you have Mr. Mike Glennon and Mr. Dave Keaney contact Mr. Cary at their convenience.

Yours sincerely,

/s/ Stansfield Turner

STANSFIELD TURNER

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OLC:PG:sf5233/1372 (13 May 1977)

United States Senate

COMMITTEE ON FOREIGN RELATIONS
WASHINGTON, D.C. 20510

OLC #77-1870

May 6, 1977

SCER
77-0001

The Honorable Stansfield Turner
Director, Central Intelligence Agency
Washington, D.C. 20505

Guidelines

Dear Admiral Turner:

On April 19 I wrote the President to request executive branch cooperation concerning an investigation being undertaken by the Subcommittee on International Operations. A copy of this letter, which describes the investigation more fully, is enclosed. On May 3 the President wrote that such cooperation will be forthcoming; that letter is also enclosed.

The purpose of this letter is to request that you designate an officer of your Agency to serve as liaison with the Subcommittee for the purposes of this investigation. The primary responsibility of this person will be to arrange for interviews and testimony with appropriate persons from your Agency and to secure documents relevant to matters arising during the course of the investigation. The Committee's Legal Counsel, Mike Glennon, will serve as your contact with the Subcommittee on matters relating to the activities of foreign intelligence agencies in this country and foreign-sponsored surveillance, harrassment or intimidation of private persons. Dave Keaney of the Committee staff will serve as your contact on matters relating to efforts by foreign interests to influence official U.S. Government policy. Requests of the Subcommittee for testimony, interviews, documents and other assistance will be made through them.

I reiterate what I told the President: that the investigation will be conducted with extreme circumspection, that all necessary precautions will be taken to safeguard intelligence sources and methods, and that the Subcommittee will make every effort to avoid anything resembling an executive-legislative confrontation.

We appreciate your cooperation.

Sincerely yours,

George McGovern
Chairman, Subcommittee on
International Operations

Enclosures

THE WHITE HOUSE

WASHINGTON

May 3, 1977

To Chairman George McGovern

In response to your letter of April 19, I wish to assure you of Executive Branch cooperation with the investigation of your Subcommittee on International Operations concerning the Foreign Agents Registration Act and related matters. I share your concern that there be appropriate laws and regulations to govern foreign activities in this country.

Sincerely,

Jimmy Carter

The Honorable George S. McGovern
Chairman, Subcommittee
on International Operations
United States Senate
Washington, D. C. 20510

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, D.C. 20510

April 19, 1977

Dear Mr. President:

The purpose of this letter is to inform you concerning an investigation now being initiated by the Subcommittee on International Operations, and to request that you direct the appropriate Executive Branch agencies to cooperate fully with the Subcommittee's efforts.

The focus of the Subcommittee's study is the Foreign Agents Registration Act, which is the basic U. S. law governing foreign-sponsored activity in this country aimed at influencing U. S. Government policy. To carry out its provisions, the Justice Department's Criminal Division runs a Foreign Agents Registration Unit. Last year, a preliminary investigation by the Foreign Relations Committee indicated serious deficiencies in the current law and its implementation. At the same time, new evidence has developed that a particular kind of foreign-sponsored activity not covered by the law also requires careful scrutiny: operations in this country by foreign intelligence agencies directed at the surveillance, harrassment, and intimidation of private persons, usually foreign nationals. With this purview, it is the Subcommittee's intention to conduct a purposeful investigation directed toward the enactment of new legislation -- a revised version of the Foreign Agents Registration Act -- which would establish appropriate laws and regulations to govern all such foreign-sponsored activi

Recognizing the sensitivity surrounding the operations of foreign intelligence agencies in this country, I can, as chairman of the Subcommittee, assure you that this investigation will be conducted with extreme circumspection, that all necessary precautions will be taken to safeguard intelligence sources and methods, and that the Subcommittee will make every effort to avoid anything resembling an executive legislative confrontation. Our purpose is to enact sound legislation which protects the integrity of the U. S. Gover ment decision-making process and which safeguards the priva and individual liberty of all who reside in the United Stat U. S. citizen and foreign national alike.

The President
The White House

Pursuant to this letter, I shall notify the heads of the appropriate agencies -- including the CIA, the NSA, and the Justice and State Departments -- concerning the Subcommittee's investigation and shall ask that they cooperate fully. In the meantime, I respectfully request that you direct that such cooperation be forthcoming.

Sincerely yours,

George McGovern
Chairman, Subcommittee on
International Operations